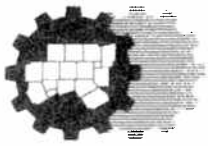

North Central Texas Council Of Governments

May 24, 2010

Council on Environmental Quality
Nancy H. Sutley, Chair, Council on Environmental Quality

RE: Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions

Action: Proposed Guidance

Dear Chair Sutley:

The North Central Texas Council of Governments (NCTCOG) appreciates the opportunity to comment on the implementation of greenhouse gas (GHG) emissions into the National Environmental Policy Act (NEPA) studies. NCTCOG serves a 16-county region of North Central Texas, which incorporates the two urban centers of Dallas and Fort Worth (DFW). NCTCOG serves as the Metropolitan Planning Organization (MPO) for 12 counties surrounding the DFW area and provides transportation planning, coordination, and guidance under the Metropolitan Transportation Plan (MTP).

NCTCOG has reviewed the information published on February 18, 2010, by the Council on Environmental Quality (CEQ) in the Memorandum for the Heads of Federal Departments and Agencies; the following comments are offered from the perspective of incorporating the effects of climate change and GHG emissions into the NEPA process for transportation projects:

Inclusion of Effects of Climate Change and GHG Emissions in NEPA Documents: We recommend that March 3, 2012, be the earliest date for incorporating the effects of climate change and GHG emissions in NEPA documents. This is the date that all transportation air quality analysis and emissions inventories incorporate the MOVES model; unlike MOBILE6, the current emissions model, the MOVES model is sensitive to speed and operational improvements, critical factors in estimating GHG emissions. Due to severely limited transportation funding, many MPOs may be constrained to only operational improvements; use of the results of the MOVES model in the regional transportation plan (and subsequently referencing these results in the region's NEPA documents) will allow a more accurate estimation of regional GHG emissions and possible climate change effects. The interim between May 2010 until March 2012 will provide the Department of Transportation (DOT) and their associated MPOs time to develop a level of commonality in the language, methodology, and analysis that will be utilized in environmental documents to report the regional emissions, recognizing that a "one-size" boilerplate text will not fit all MPOs associated with a particular DOT. For states whose NEPA documents are frequently litigated, a level of commonality may minimize any substantive inconsistencies the court may find or question during their reviews of multiple documents. NCTCOG supports CEQ's requirement for agencies to exclude bulk and boilerplate information on GHG discussions in NEPA documents.

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Geographic Level of Analysis: Given the available strategies for reducing emissions, the modeling capabilities/requirements and the staffing demands, it is requested that the MPO's metropolitan planning area be the geographic scale at which the analysis would be conducted. Recently introduced federal legislation supports conducting regional emission analysis and assessing regional adaptation to the effects of climate change as part of the metropolitan transportation planning process.

A clarification is requested for "areas that are considered vulnerable to specific effects of climate change" and those areas where projects are located that should consider climate change effects. As stated in the previous paragraph, these areas would be regional in nature and not 'hot spots,' or project level areas.

Analysis of Emissions Sources: As proposed, the "analysis of emissions sources should take into account all phases and elements of the proposed action over its expected life, subject to reasonable limits based on feasibility and practicability." Given the evidence of effective technologic innovations occurring relative to transportation fuel consumption and increased energy efficiency, as well as the increasing number of legislative mandates in these areas, the resulting analysis for transportation infrastructure improvement may ultimately not provide meaningful information for the decision makers and public. Similarly, the evaluation of energy requirements and conservation opportunities between reasonable alternatives of the same mode might not be meaningful; differences between transportation modes may yield meaningful differences with respect to energy consumed and conservation opportunities, but meaningful differences between reasonable alternatives of the same mode are generally not anticipated.

Direct and Indirect impacts: "meaningful threshold" – CEQ proposes that if a proposed action would be reasonably anticipated to cause direct emissions of 25,000 metric tons of CO_2-equivalent GHG emissions on an annual basis, this should be considered a meaningful indicator to decision makers and the public. NCTCOG questions whether this single threshold is appropriate, and asks that a range of thresholds be considered, varying as a function of the project's size, urban area.

Transportation projects' GHG indirect effects would be difficult to accurately assess in NEPA documents; specifically, guidance and clarification is needed for determining the indirect effects "upstream and downstream" of the proposed agency action. Growth inducing effects and land use changes related to transportation projects are a current requirement in the indirect impacts evaluation of transportation NEPA documents. As the proposed guidance acknowledges that no protocols exists for determining GHG emissions from land use changes and land management techniques, and as land-use and land management are tied closely to transportation improvements, suggest acknowledging in the NEPA document that the analysis for the nexus of transportation and land-use GHG indirect effects is currently beyond analysis capabilities.

Cumulative impacts: Pending the development of at least rudimentary guidance, we recommend that CEQ postpone the requirement for cumulative analysis, relative to the affect of GHG global and regional emissions on a given resource. At best, the global analysis would be highly speculative; relative to performing cumulative analysis on regional emissions, to our knowledge no resource agency has developed these analysis guidelines for the resource(s) under their jurisdiction.

There are additional complications associated with cumulative impacts analysis. The guidance acknowledges that climate change can affect the environment of a proposed action in a variety of ways. However, cumulative impacts for transportation projects are examined exclusively from a resource perspective; this approach to evaluating cumulative impacts for Federal Highway Administration (FHWA) projects results from case law (*Fritiofson v. Alexander,* 772 F.2d 1225, 5th Circuit, 1985). Other federal agencies may base their cumulative impacts analysis on other factors and/or conflicting case law. Relative to cumulative impacts on ecosystems, transportation NEPA practitioners lack the analysis tools to evaluate individual resources functioning as an integrated system; historic data that definitively links climate changes to risk of floods and storm surges may also be lacking. Assuming that a more appropriate temporal period is not self-evident; suggest that the temporal impacts be bounded by the planning horizon year as identified through the long-range MTP or Unified Transportation Plan. Due to the accumulating benefits of transportation technological advances, the reasonable projection of GHG emissions estimates and climate change conclusion(s) beyond the MTP's horizon year becomes increasingly questionable.

Scoping: Guidance will need to be provided for how the scoping process will set the spatial and temporal boundaries for GHG evaluation. It is unclear how these boundaries would be determined, if they differ from the Metropolitan Planning Area (MPA) and the MTP's horizon year.

GHG Emissions Mitigation: The draft guidance proposes that when a federal agency evaluates the proposed mitigation of GHG emissions, that "the quality of that mitigation be carefully assessed relative to its permanence, verifiability, enforceability, and additionality." Beyond operational and maintenance improvements, current and foreseeable transportation funding levels may curtail GHG mitigation options, as well as the ability to meaningfully reduce GHG emissions to a target level. The two primary tools utilized by DOTs and MPOs to mitigate/ reduce GHG emissions is through technologic innovations and lowering the vehicle miles traveled; the effectiveness of these tools might be verified through measurement and transportation model results, but DOTs and MPOs lack any enforcement power. Determining GHG emissions mitigation may be further complicated by the number of federal agencies, e.g., Federal Transit Administration (FTA), Federal Aviation Administration (FAA), FHWA, and Federal Railroad Administration (FRA) who may be involved in the development of the DFW region's NEPA documents; which of these agencies mitigation strategies will have implementation primacy has yet to be answered, especially if and when these documents have multiple federal agencies who are signatories on the same document.

Relative to the evaluation of GHG emissions, the web-link to the mobile source information sheet provided by CEQ is still under development; the opportunity to comment on this information should be offered before GHG analyses are required for NEPA documents.

In summary, NCTCOG recommends the following:

- In addition to NO_x, VOCs, Mobile Source Air Toxics (MSAT), climate change and GHG effects analysis would be conducted and reported by the MPO at the regional level, as an integral part of the metropolitan planning process.

- The MPO's resultant regional analysis of climate change and GHG effects will be incorporated by reference in subsequent NEPA documents, which are developed in the MPO's metropolitan planning area.

- To our knowledge, resource agencies have yet to develop guidelines on how to conduct GHG and climate change cumulative effects analysis on their jurisdictional resource(s). In addition, it is unclear which federal agency's legal framework will take precedence for conducting GHG cumulative effects analysis and then, which federal agency's set of mitigation strategies will be implemented. Given these unknowns, we recommend a simple statement that the potential overlap of jurisdictional responsibilities and conflicting agency guidelines currently inhibit the ability to perform a meaningful cumulative effects analysis of greenhouse gas emissions at this time.

The opportunity to comment on the GHG emission guidance for NEPA is appreciated. We look forward to a continued partnership with State and federal agencies, businesses, and environmental interest as we work together toward the common goal of cleaner air and a better environment. Should you have any questions, please contact Christopher Anderson, Project Manager, at 817-704-5634 (canderson@nctcog.org) or Nathan Drozd, Transportation Planner III, at 817-704-5635 (ndrozd@nctcog.org).

Sincerely,

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